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Tennessee Regulatory Authority
Nashville, Tennessee

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IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

DOCKET NO. 00-00523

**PETITION FOR RECONSIDERATION
BY THE RURAL INDEPENDENT COALITION OF
SMALL LOCAL EXCHANGE CARRIERS AND COOPERATIVES**

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to as the "Coalition" or the "Independents") respectfully submits this Petition for Reconsideration pursuant to Chapter 1200-1-2-.20 of the Rules of the Tennessee Regulatory Authority (the "TRA Rules"). The Coalition seeks reconsideration of the September 1, 2004 "Order Reconsidering Hearing Officer's Initial Order Addressing Legal Issue 2 and Amending the Hearing Officer's Order Issued May 6, 2004" (the "*Order*"). Pursuant to TRA Rule 1200-1-2-.20, the Coalition also requests that the Authority permit it to place several documents in evidence, as discussed in Section III, *infra*

In support of its Petition, the Coalition shows the following:

I. The Authority Should Reconsider Its Decision Terminate the Injunctive Relief Established by the *First Initial Order* Issued on December 29, 2000.

Ordering Clause 1 of the *Order* wrongfully requires that "The injunctive relief set forth in the First Initial Order issued on December 29, 2000, shall come to an end on September 30, 2004." There exists no lawful procedural nexus between the sudden grant of this relief and the matters noticed for review and consideration before the Authority

No aspect of the December 29, 2000 *First Initial Order* is under review. The *First Initial Order* was, in fact, the subject of a final Order issued by the Authority on May 9, 2001. Prior to the Motion adopted at the August 9, 2004 Authority conference upon which the *Order* is based, neither the Authority nor any party has proposed to terminate the injunctive relief established by the December 29, 2000 *First Initial Order* or to attempt to challenge or undo any aspect of that final decision which is not subject to further appeal.

The Coalition respectfully submits that it was unlawful for the Authority to terminate the injunctive relief granted earlier in this proceeding without first providing notice of the intent to do so and to provide the parties an opportunity to comment and to be heard. Moreover, the Coalition is confident that a full and proper consideration of all pertinent law and fact would lead the authority to the conclusion that termination of the injunctive relief will not serve the public interest¹

II. BellSouth's Request to Allow Negotiations To Take Place Outside of This Docket Is Moot.

The Coalition requests that the Authority reconsider ordering clause 2 of the *Order* to the extent that the *Order* grants BellSouth's *First Reconsideration Motion* "in part, to allow negotiations regarding the toll settlement agreements to take place outside of this docket."

¹ The Coalition does not suggest that further consideration of whether the injunctive relief should be terminated is appropriate on reconsideration – it is not appropriate. Should the Authority or any party seek to terminate the injunctive relief, the Authority should establish an appropriate hearing process to address that matter. The Coalition's reconsideration request is limited to the straight-forward fact that the *Order* requires the termination of the injunctive relief in the absence of notice and an opportunity to be heard. The Coalition respectfully reserves its right within the context of potential judicial review of the *Order* to demonstrate that the facts before the Authority do not possible warrant termination of the injunctive relief. If anything, BellSouth's blatant disregard for the Authority's standing requirements demonstrates the prudence of the injunctive relief. The Coalition could understand why BellSouth, its management and counsel may want to terminate the injunctive relief, but, they have not asked to do so. The Coalition cannot understand the basis upon which the Authority took this action in the absence of a request, notice, or opportunity to be heard.

The request is moot. The record before the Authority reflects in detail that there is no need to act "to allow negotiations regarding the toll settlement agreements to take place outside of this docket." In the December 29, 2000 *First Initial Order*, the Hearing Officer stated, "Finally, nothing stated herein should be construed to suggest that current efforts in developing or pursuing alternative interconnection compensation mechanisms should be relaxed." The facts before the Authority demonstrate that the Coalition members have acted to pursue the development of new alternatives.

In this regard, the Coalition is concerned that these facts are not reflected by either the motion adopted at the August 9, 2004 Authority conference or the *Order*. In this regard, the following extract from the Coalition's February 27, 2004 Brief filed in this proceeding reflects these facts²

1 In the course of the negotiations that took place between BellSouth and the Coalition, the Independents agreed to implement a BellSouth proposal regarding changes in the terms and conditions pursuant to which private line services are offered (Footnote omitted)

2. When BellSouth, contrary to the Authority's mandate to maintain existing interconnection arrangements and payments, arbitrarily ceased payment of termination charges to the Independents for traffic that BellSouth identifies as "CMRS traffic," the Independents strived to reach a compromise and agreed to accept significantly reduced compensation payments for an interim period.

3. The Coalition invested considerable time, resources and effort to develop a consensus proposal incorporating significant reductions in interconnection rates charged to BellSouth; the Coalition understood that it had fully addressed BellSouth's objectives. (Footnote omitted.)

No question of fact exists with respect to whether negotiations have taken place outside of this docket. Nor is there any need for the Authority even to clarify, much less act to reconsider

2 "Brief of the Rural Independent Coalition," February 27, 2004, Docket No. 00-00523, p. 9. This Brief was also included as Attachment A to the "Brief of the Rural Independent Coalition In Response To Motions For Reconsideration Of The Hearing Officer's Order Dated May 6, 2004" filed June 7, 2004 in this proceeding.

any aspect of the June 28, 2002 *Initial Order of Hearing Officer*. The facts before the Authority do not demonstrate that any party refrains from further negotiations pending a need for either reconsideration or clarification

III. The amendments to the Hearing Officer's May 6, 2004 Order Should Be Reconsidered To Correct Errors of Fact and Law.

As a matter of both fact and law, ordering clause 3 of the *Order* improperly modifies the *Order Granting In Part the Petition For Emergency Relief And Request For Standstill Order By The Tennessee Rural Independent Coalition* issued May 6, 2004, by the Hearing Officer. The *Order* incorrectly: 1) reduces the compensation that BellSouth pays the Coalition members for the termination of wireless traffic to 1.5 cents per minute; 2) terminates BellSouth's obligation to compensate the rural Independents on September 30, 2004; and 3) subjects the payment due from BellSouth for the period of June 2003 through September 2004 "to true-up to the rate for wireless traffic established by the Authority in Docket No 03-00585 "

The establishment of the 1.5 cent rate is an error of fact and law. The asserted factual basis for this rate is stated in the *Order* as follows. "The majority of the panel found that a 1.5 cent interim rate is just and reasonable because it reflects negotiated rates existing in approved agreements in the BellSouth region for CMRS traffic transiting BellSouth's networks." The statement is factually incorrect.

The negotiated settlements in other states require BellSouth to pay the rural local exchange carriers ("LECs") in those states at significantly higher rates. The settlements reflect that BellSouth has contractual agreements with the rural LECs similar to the existing terms and

conditions in place in Tennessee in accordance with the Authority's affirmation of the Hearing Officer's December 30, 2000 *First Initial Order*.³

The Coalition has referred to these settlements in prior pleadings.⁴ The Coalition filed a copy of one of these settlements in its "Response to Arbitration Petitions" which was filed both in Docket No. 03-00585 and in this proceeding. The Coalition has not previously filed additional examples of these settlements in this proceeding because it has not proposed reliance on these settlement arrangements as a basis to resolve the matter of the *Petition For Emergency Relief And Request For Standstill Order By The Tennessee Rural Independent Coalition*.⁵ The reliance of the majority of the panel on these settlements gives rise to good cause to "present new evidence" in a manner consistent with TRA Rule 1200-1-2- 20(2)(c).

The Coalition respectfully submits that to the extent the majority of the panel elects to rely on these settlements, reliance should be placed on the best evidence – the actual settlements.⁶ A review of these settlements demonstrates that reconsideration of the *Order* is warranted.

3 In the best light, the majority of the panel may have misunderstood the evidence presented by BellSouth. In other states where BellSouth negotiated to amend, on a temporary basis, their contracts with rural LECs to reduce BellSouth's compensation level, the rate was much higher than 1.5 cents. In those states, however, BellSouth also negotiated to amend its interconnection arrangements with wireless carriers to provide that they reimburse BellSouth for part of its payment to the rural LECs. BellSouth made out well on both ends, it would have received a significant reduction in its obligation to the rural LECs with or without a reimbursement from the wireless carriers. While BellSouth has received a significant expense reduction in every instance where it has demanded relief from its established obligations, an interesting question remains for all parties and regulators that assisted in producing the outcome that benefits only BellSouth. What was the benefit to the general consumer and what will be the impact on rural users?

4 See, e.g., Coalition Brief filed June 7, 2004 at fn. 9, and Coalition Brief filed February 27, 2004 at fn. 19.

5 As reflected by the pleadings in this proceeding it is the position of the Coalition that there are no facts before the Authority that warrant rewarding BellSouth's blatant disregard of the Authority's standing Orders by reducing the obligations it has on a retroactive basis. The Coalition, accordingly, does not waive any of its rights with respect to the advancement of this position in subsequent hearing on reconsideration or judicial review.

6 In accordance with TRA Rule 1200-1-2- 20, the Coalition attaches hereto copies of those settlements (Georgia, Mississippi, and Kentucky) in which the Coalition's counsel, Kraskin, Moorman & Lesse LLC, participated directly.

Moreover, reconsideration should be give to both the termination of BellSouth's obligations on September 30, 2004 and the imposition of a true-up wrongly required by the *Order*. The decision to permit BellSouth to escape its obligation to compensate the rural Independents for the termination of wireless traffic has no basis in fact or law. The standing order of the Authority provides that BellSouth should continue to abide by the existing arrangements "until such time that the current arrangement is otherwise terminated, replaced, or modified by the Authority" ⁷

No legal or factual basis exists to alleviate BellSouth of its obligations. BellSouth has a contract approved by the Authority that permits BellSouth to carry the traffic of wireless carrier to the networks of the rural Independents. BellSouth is paid for this service in accordance with a rate that it freely negotiated and asked the Authority to approve. When it asked and received approval, both BellSouth and the Authority were aware of BellSouth's obligation to compensate the rural Independents for the traffic it carried to their networks.

To the extent that the *Order* alleviates BellSouth of its obligations prior to the establishment of new terms and conditions that ensure that the rural Independents are compensated for the termination service they provide, reconsideration is warranted. Similarly, there is no basis to reward BellSouth for disregarding the standing Order of the Authority by providing a "true-up" retroactive to June 2003. The Coalition respectfully submits that BellSouth should compensate the rural Independents in accordance with the applicable rates established by the existing terms and conditions "until such time that the current arrangement is otherwise terminated, replaced, or modified by the Authority." This is what is required by the *First Initial Order* – a final order subject to no further appeal.

⁷ *First Initial Order*, p. 12

Retroactivity effectively abrogates the *First Initial Order*. Retroactivity rewards BellSouth for disregarding the *First Initial Order*. If BellSouth (or a majority of the Authority) sought the repeal the *First Initial Order*, it should have done so through lawful administrative processes. The modification of BellSouth's obligations on a retroactive basis conflicts with the clear intent of the TRA's standing order. The resulting unjust enrichment to BellSouth would be achieved at the expense of the integrity of the Authority's processes and produce no benefit to Tennessee' ratepayers. Reconsideration is warranted

Conclusion

The *Order* is flawed as a matter of both fact and law. For the reasons set forth above, the Coalition submits that this Petition for Reconsideration should be granted together with the request to enter additional evidence into the record. In addition, the Coalition respectfully requests that the Authority establish an expedited schedule to resolve these matters upon the grant of this petition or that the Authority alternatively act on its own motion, and in accordance with the record before it, to modify the *Order* in a manner consistent with the discussion set forth above.

Respectfully submitted,

The Tennessee Rural Independent Coalition

By William T. Ramsey
William T Ramsey
Neal & Harwell, PLC
2000 First Union Tower
150 Fourth Avenue North
Nashville, Tennessee 37219-2498

Stephen G Kraskin (h, wife)

Stephen G Kraskin
Kraskin, Moorman & Cosson LLC
2120 L St N.W. Suite 520
Washington, D.C 20037

September 16, 2004

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2004, a copy of the foregoing document was served on the parties of records, via the method indicated:

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Russ Mitten, Esquire
Citizens Communications
3 High Ridge Park
Stamford, CT 06905
Rmitten@czn.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Charles B. Welch, Esquire
Farris, Mathews, et al
618 Church Street, #300
Nashville, TN 37219
cwelch@farrismathews.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Mr. David Espinoza
Millington Telephone Company
4880 Navy Road
Millington, TN 38053
dce@bigriver.net

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Jon E. Hastings, Esquire
Boult, Cummings, et al
P.O. Box 198062
Nashville, TN 37219-8062
jhastings@boultcummings.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Henry Walker, Esquire
Boult, Cummings, et al
P.O. Box 198062
Nashville, TN 37219-8062
hwalker@boultcummings.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

James Wright, Esquire
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587
james.b.wright@mail.sprint.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Clay Phillips, Esquire
Miller & Martin
150 4th Avenue, N., #1200
Nashville, TN 37219-2433
cphillips@millermartin.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Martha Ross-Bain, Esquire
AT&T
1200 Peachtree ST, NE
Atlanta, GA 30309
Ross-bain@att.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Donald L. Scholes, Esquire
Branstetter, Kilgore, et al
227 Second AV, N
Nashville, TN 37219
dscholes@branstetterlaw.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202
Timothy.phillips@state.tn.us

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

J. Gray Sasser, Esquire
Miller & Martin
150 4th Avenue, N., #1200
Nashville, TN 37219-2433
gsasser@millermartin.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Julie Corsig, Esquire
Davis Wright Tremaine LLP
One Embarcadero Center, #600
San Francisco, CA 39111-37611
Julie.corsig@dwt.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Beth K. Fujimoto, Esquire
AT&T Wireless Services, Inc.
7277 164th AV, NE
Redmond, WA 90852
Beth.fujimoto@attws.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Joelle J. Phillips, Esquire
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
joelle.phillips@bellsouth.com

William J. Ramsey